



Implications of Recent Drug Disposal Regulations for Home Health and Hospice Providers

H. Carol Saul and Jordan C. Kearney

Recent regulations from the U.S. Drug Enforcement Administration (DEA) on disposal of controlled substances have important implications for home health and in-home hospice providers and necessitate changes in providers' policies and procedures in many states. In responding to comments from hospice and home health providers, the DEA confirmed that, under its interpretation of the Controlled Substances Act (CSA) and implementing regulations, home health and hospice employees, in most instances, are not permitted to dispose of unused controlled substances on behalf of their patients. 79 Fed. Reg. 53,520, 53,546 (Sept. 9, 2014). Skilled nursing facilities and other institutions that provide extended health care to resident patients, on the other hand, may dispose of controlled substances on behalf of ultimate users who reside or have resided at such facilities. 21 U.S.C. § 822(g); 79 Fed. Reg. at 53,546.

The DEA stated that, while it “appreciates the difficulties facing home hospice staff with regard to the disposal of pharmaceutical controlled substances,” the CSA only grants the DEA authority to authorize three groups of people to deliver controlled substances for the purpose of drug disposal, and home health and hospice providers are not one of those three groups. *Id.* Specifically, the three groups that may lawfully deliver controlled substances for disposal are:

1. “Ultimate users” who lawfully obtain the controlled substance. Ultimate users include the person who “lawfully obtained, and possesses, a controlled substance for his own use or for the use of a member of his household.” 21 U.S.C. § 802(27).
2. If a person dies while lawfully in possession of a controlled substance, any person “lawfully entitled to dispose of the decedent’s property.” 79 Fed. Reg. at 53,546; *see also* 21 C.F.R § 1317.30.
3. Long-term care facilities on behalf of ultimate users who reside or have resided at such facilities. 21 U.S.C. § 822(g).

Therefore, unless the patient has died and state law allows the provider to deliver the unused controlled substances for destruction, “home hospice and homecare personnel are not authorized to receive pharmaceutical controlled substances from ultimate users for the purpose of disposal.” Hospice employees may not take possession (or even touch) these unused medications. 79 Fed. Reg. at 53,546.

Home health and hospice employees may, however, provide education on how the patient or a member of the patient’s household can dispose of the medication. Home health and hospice agencies are also “encouraged to partner with authorized collectors to promote or jointly conduct mail-back programs.” *Id.* Though the DEA regulations do not require providers to take these measures, in states that require the home health or hospice agency to dispose of the drugs, collaboration with an authorized collector may be the only method to comply with both the federal CSA and state law.

Authors and Contributors

H. Carol Saul

Partner, Atlanta Office
404.873.8694
carol.saul@agg.com

Jordan C. Kearney

Associate, Atlanta Office
404.873.8152
jordan.kearney@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office

171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2014. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.